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Filed : March 26, 2001

REMARKS

In the Office Action, Claims 9-14 were rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention, claims 1-3 and 5-6 were rejected under 35 U.S.C. 102(c) as being anticipated by Zembitski (U.S. Patent No. 6,193,160), claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Shavit et al. (U.S. Patent No. 4,799,156), claims 7-8 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Allard et al. (U.S. Patent No. 6,294,733), claim 16 was rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Shavit et al. (U.S. Patent No. 4,799,156) and Allard et al. (U.S. Patent No. 6,294,733), Claim 17 was rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Shavit et al. (U.S. Patent No. 4,799,156) and Allard et al. (U.S. Patent No. 6,294,733) and Official Notice, claim 18 was rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Hicks (U.S. Patent No. 6,615,184), claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Zembitski as applied to claim 1 above, and further in view of Schlamp (U.S. Patent No. 5,431,250) and Diamond et al. (U.S. Patent No. 6,370,515).

Response to Rejections

By focusing on specific references, claims and limitations in the remarks that follow, Applicant does not intend to imply an agreement with the Examiner's assertions with respect to other references, claims, and limitations.

**As to Independent Claim 1**

Claim 1 recites, "on a computer system, for each of a plurality of consumers, associating a plurality of items ordered by the consumer from a plurality of merchants."

The examiner takes the position that these limitations are anticipated by Zembitski (U.S. Patent No. 6,193,160) in reliance upon the following two excerpts in the cited reference:

(col. 1 lines 45-51) - "The most recent bar code reading apparatuses are built around a microcomputer architecture; they can be coupled to a central computer system in various ways: hertz waves, wired link, modem, optical (infrared) channel, and so on. They can record a large

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number of data, which data can concern both information being read from these bar codes and various pre-recorded information and/or instructions."

(col. 2 lines 16-29) - "a parcel sorting and grouping area Z4, in which said prepared parcels are sorted and grouped according to various parameters such as consignee addresses, carrier addresses, and so on. Finally, the last operation in this area consists of loading such filled parcels into said carrier vehicles. Within the scope of this invention, the notion of parcel should be understood in its broadest sense and the same is true for the notion of container. The latter might be a simple bin which the items corresponding to the batch of customer ordered items are temporarily put into, or a cardboard which will be closed when filled with such a batch, or still a cardboard in a bin."

However, Applicant can find no reference or implication in the above excerpts that discloses the above stated first limitation of Claim1 and more specifically Zembitski does not address the issue of "items ordered by the consumer from a plurality of merchants."

Claim 1 also recites, "for each consumer, receiving the associated items at a single geographic location." The examiner takes the position that this limitation is also anticipated by Zembitski (U.S. Patent No. 6,193,160) in reliance upon the following excerpt in the cited reference:

(col. 5 lines 59-63) - "According to one of its implementations, the object of the invention is an installation designed for putting together order batches, wherein each batch includes at least one contents item to be placed into a container by being picked in a storage area, characterized in that it comprises at least one portable optical reading device."

However, Applicant can find no reference or implication in the above excerpt that discloses the above stated second limitation of Claim1. Zembitski contemplates a warehouse with large inventories of items and an automated pick-and-pack system to fill orders using the items in inventory but does not address the issue of receiving, at a single geographic location, the items ordered by consumers from a plurality of merchants.

Accordingly, the above recited limitations are not shown or even suggested in the cited art.

Since all the limitations of claim 1, have not been shown in the cited references, Applicant respectfully submits that Claim 1 has not been anticipated by the cited references. Claims 2-4, 6, 18, and 19 depend on Claim 1 and should likewise be allowed for at least the reasons set forth

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above with respect to Claim 1. These dependent claims also recite additional patentable distinctions over the cited art.

**As to Independent Claim 7**

Claim 7 recites, "on a computer system, identifying a plurality of consumers and for each consumer:

for each of a plurality of merchants, identifying an item purchased by the consumer from the merchant."

The examiner takes the position that this limitation is anticipated by Zembitski (U.S. Patent No. 6,193,160) in reliance upon the following three excerpts in the cited reference:

(col. 1 lines 6-10) - "The present invention relates to an installation for preparing orders by picking products from a storage area, such as the installations being used in the food products industry for loading parcels according to orders to be met, and for delivering independently into each parcel. It particularly is related to an installation comprising at least a portable electronic device, of the bar code reader type or similar, to be used for realizing and checking the product picking according to the orders."

(col. 1 lines 45-58) - "The most recent bar code reading apparatuses are built around a microcomputer architecture; they can be coupled to a central computer system in various ways: hertz waves, wired link, modem, optical (infrared) channel, and so on. They can record a large number of data, which data can concern both information being read from these bar codes and various pre-recorded information and/or instructions. Apparatus of this type is in particular used for preparing parcels according to a customer order, by loading those products, to be delivered, which are available in a storage installation provided for various items. Within the scope of the invention, the expression "storage installation" relates to any type of warehouse for logistically distributing various products, items, goods, pieces or objects."

(col. 2 lines 16-29) - "a parcel sorting and grouping area Z4, in which said prepared parcels are sorted and grouped according to various parameters such as consignee addresses, carrier addresses, and so on. Finally, the last operation in this area consists of loading such filled parcels into said carrier vehicles. Within the scope of this invention, the notion of parcel should be understood in its broadest sense and the same is true for the notion of container. The latter might be a simple bin which the items corresponding to the batch of customer ordered items are

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temporarily put into, or a cardboard which will be closed when filled with such a batch, or still a cardboard in a bin."

However, Applicant can find no reference or implication in the above excerpts that discloses the above stated first limitation of Claim 7. Zembitski contemplates a warehouse with large inventories of items and an automated pick-and-pack system to fill orders using the items in inventory but does not address the issue of "identifying a plurality of consumers and for each consumer:

for each of a plurality of merchants, identifying an item purchased by the consumer from the merchant."

Since all of the limitations of Claim 7 have not been shown in the cited references, Applicant respectfully submits that Claim 7 has not been shown obvious. Claims 8-14 and 16-17 depend from Claim 7 and should likewise be allowable for at least the reasons set forth above with respect to Claim 7.

#### **As to Dependent Claim 9**

In the Office Action, the Examiner could not determine the meaning and scope of claim 9 and requested a correction. Apparently a portion of the claim text appearing on another line was lost due to the facsimile transmission. Claims 10-14, which depend on claim 9, were rejected as a consequence. Claim 9 recites, in its entirety, "The method of Claim 1, wherein the selected location is an order aggregation site." A detailed explanation and definition of the "order aggregation site" can be found in the specification (Section I.A.3. page 17 lines 8-10; Section II.A.6. page 23 lines 4-30; Section II.A.12. page 25 lines 12-16; Section II.C. page 27 line 13 through page 28 line 13; Section III.C. page 34 line 20 through page 35 line 13; Section IV.D. page 62 line 19 through page 68 line 22; Section XIII. page 94 line 13 through page 97 line 23).

Accordingly, the Examiner's rejection under section 112 should be withdrawn for Claim 9 and all the claims depending therefrom.

#### **CONCLUSION**

In view of the foregoing remarks, Applicant submits that the application is in condition for allowance. If, however, issues remain which can potentially be resolved by telephone, the Examiner is invited to call the Applicant at his direct dial number of (408) 730-0110.

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